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APPLICATION NO. 09/509,377

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ART UNIT 3739

Board of Patent Appeals and Interference
US Patent and Trademark Office,
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The United States of America

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REPLY BRIEF

on Examiner's Answer from August 6, 2008

Here is the essence of the conflict. The Examiner Mr. Leubecker illegally granted the U.S. Pat. 6,485,409 and is blocking this application. The fact of those identity is apparent even from the outside (see the letter of Mr. Tilson). But the Examiner, contrary to others 8 examiners who examined this application and granted patents, "discovered" its identity with the prototype SU 1522466. Since there is no such identity, the Examiner distorts terms, the construction of SU 1522466 ... — read further.

As to Section (9), subsection "REFUSES UNDER 35 U.S.C. 102(d)".

The Examiner asserts: "*Matasov [SU 1522466] discloses "an endoscopic tube (3) ..., comprising a disposable cartridge (4) located on the distal part of the endoscopic tube and formed of a compact hollow cylinder (7)"*".

Disclosure of distortion No. 1: SU 1522466 "discloses ... disposable cartridge (4)".

- 1.1. The Examiner distorted the term cartridge. In a fire-arm this is a separate from a barrel unit: that is a union of a percussion cap, gunpowder and shot, comprised in a shell.
- 1.2. The working of an endoscope according to SU 1522466 could be associated with firing from a musket, but according to the application 09/509,377 — with such from a gun with cartridges. There are 2 joint criterions inherent to a device with disposable cartridges: the presence of a shell and acceleration of assembling of disposable details.
- 1.3. In SU 1522466 there is no any "cartridge (4)" as well as no such word. The thin-walled elastic tube (4) is not a shell and it does not accelerate assembling of endoscope. As other 7 disposable details, during the assembling process it is gathered on a light-pipe (3) (column 3, lines 36-55; column 4 lines 7-9).
- 1.4. In SU 1522466 there is no any shell, uniting 8 disposable details, including: a seal (13), a spring (10), rings (8),(9), a thin-walled elastic tube (4), a projection (6), a ring (16), an anal dilator (19) (column 3, lines 10-35).

* Examiner's citations are given by italics in quotation marks.

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- 1.5. In SU 1522466 there is no any cartridge, which substitutes 12 assembling operations (column 3, lines 36-55), including gathering of the thin-walled tube (4) on the light-pipe (3) and cocking of the spring 10.
- 1.6. In the application 09/509,377 there is the cartridge (fig. 1b, 1c), comprising the shell (22), which unites disposable details (page 3, lines 13-24), and substitutes 12 assembling operations by only 1.

Disclosure of distortion No. 2: SU 1522466 "discloses ... compact hollow cylinder (7)":

- 2.1. In SU 1522466 there is no any "compact hollow cylinder (7)", as well as there is not:

- combination of words "formed in a compact hollow cylinder",
- combination of words "compact hollow cylinder",
- combination of words "hollow cylinder",
- combination of words "compact cylinder",
- word "cylinder".

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- 2.2 In SU 1522466 there is the pleated thin-walled elastic tube (4) (invaginator), which grasps the light-pipe (3) at gathering. At working pressure in a cavity (14) it additionally, in accordance with Pascal¹ law, cuddles to the light-pipe (3) (SU 1522466, column 4, lines 47-53; application 09/509,377, page 1, lines 38-40).
- 2.3. In SU 1522466 the absence of "compact hollow cylinder (7)" de facto is illustrated by non-ability of spring (10) at working pressure in cavity (14) to displace the unverted part of invaginator (4) to the projection (6) (SU 1522466, column 4, lines 48-53; application 09/509,377, page 1 lines 36-37, line 41 – page 2 line 1).
- 2.4. The first aim of invention according the application 09/509,377 is to "increase reliability of invagination" (page 2 line 34). It relates to the drawbacks, named in items 2.2 and 2.3.
- 2.5. In the application 09/509,377 there is the invaginator, formed in a compact hollow cylinder (23), which compactness provides maintaining of a gap (25) and moving to the projection (6) at working pressure in the cavity (14).

The Examiner asserts: in SU 1522466 "inherently, because they are separate elements, there is a gap between the cylinder (7) and the endoscopic tube (3)".

Disclosure of distortion No. 3: In SU 1522466 "inherently ... there is a gap ...".

- 3.1. The context of the gap is in detail and clearly given in application 09/509,377 (page 1, last paragraph).

¹ Blaise Pascal in XVII century has discovered that all liquids and gases transfer the pressure produced on them, equally in all directions.

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DR MATASOV SERGEY

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PAGE 3/8 * RCVD AT 10/6/2008 9:28:44 AM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/26 * DNIS:2738300 * CSID:+3716761139300000000 * DURATION (mm-ss):04-36

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- 3.2. "The gap is a positive difference between diameters of an opening and a shaft, which creates a freedom of their relative motion".
- 3.3. The Examiner distorted the term *gap*.
- 3.4. In SU 1522466 there is no any "cylinder (7)", but there is the pleated invaginator (4), which grasps the light-pipe (3) at gathering (see item 2.2, SU 1522466, the drawing). As the contact diameters of the gathered part of invaginator (4) and the light-pipe (3) are inherently equal – there is no gap between them.
- 3.5. In SU 1522466 there is no a word *gap*. De facto the absence of gap is determined by equal contact diameters of the light-pipe (3) and the invaginator gathered on it.
- 3.6. In SU 1522466 there is never any gap in a pair invaginator-endoscope, but at the atmospheric pressure in cavity (14) the spring (10) is able to displace the unverted part of invaginator (4), at working pressure, in accordance with the Pascal law – it is not able.
- 3.7. In a pair invaginator-endoscope of the application 09/509,377 the gap (25) is present constantly, as the invaginator is formed in a compact hollow cylinder (23), which compactness provides maintaining of the gap (25) at working pressure in the cavity (14).

As to Section (9), subsection "REFUSES UNDER 35 U.S.C. 103(a)".

It is well-proven above, that SU 1522466 does not anticipate the novelty of claim 1 of application 09/509,377. In this connection claims 13 and 15, being dependent from claim 1, could not be refused under 35 USC 103 (a).

As to Section (10), subsection "Important note".

Regarding the remark: the Applicant is "unfamiliar with patent law and practice". It is not so – the Applicant pro se have 15 patents, the granting of new ones is expected.

The treatment of the Examiner Mr. Leubecker towards the "patent law and practice" is characterized by the illegal granting by him of the U.S. Pat. 6,485,409 and blockade of this application. So, the Examiner:

- From January till June 2000 carried out the International Search of the application PCT/IL00/00017.
- On August 20, 2000 received this application 09/509,377 and on November 13, 2000 – the application 09/646,941.
- On November 26, 2002 has granted U.S. Pat. 6,485,409 on the application 09/646,941 (2 years later), having ignored its lack of novelty under this application 09/509,377 and SU 1522466.

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- For 8 years denies the novelty of this application 09/509,377. The mean of blockade - distorting of terms, "fitting" of construction of prototype SU 1522466 and other – see the correspondence and this letter.
- Ignores eight-repeated acknowledgment of novelty of this invention and granting of patents of EPO, EAPO, Canada, Australia, China, Ukraine, Israel, Latvia.
- Does not admit to consideration and does not take into account the letter from Mr. Tilson about identity of U.S. Pat. 6,485,409 to this application (enclosed to the reply from December 12, 2007).

As to Section (9), subsection "Response to Whether claims 1, 4, 5, 10, 11, 21 and 22 are unpatentable under 35 USC 102(d) as being anticipated by Matasov (SU 1522466)".

The Examiner asserts: In the application 09/509,377 *"the gap is not defined in the original specification, and clearly not defined in the claim, in a manner that provides any relative size or degree"*.

Disclosure of distortion No. 4: in the application 09/509,377 *"the gap is not defined ... in a manner that provides any relative size or degree"*.

- 4.1. Here, as well as in item 3, the Examiner distorts the term *gap*.
- 4.2. The context of the *gap* is in detail and clearly given in application 09/509,377 (page 1, last paragraph).
- 4.3. "The *gap* is a positive difference between diameters of an opening and a shaft, which creates a freedom of their relative motion".
- 4.4. Any defining of "a *size or degree*" is not required here, as the term *gap* means the freedom of motion of invaginator relatively to the endoscopic tube.
- 4.5. Thus, the *gap* is defined by: the context (page 1, last paragraph), the term, the description (page 3 lines 17-18) and drawings (fig. 1e and 1f).

The Examiner asserts: *"it was not pointed out until the Appeal Brief that the compact cylinder is first formed on an inner forming rod that is larger in diameter than the endoscopic tube"*.

Disclosure of distortion No. 5: *"it was not pointed out ... that the compact cylinder is first formed on..."*.

- 5.1. Description of "the die-mold which includes the die in the shape of rod" was provided long before the *Appeal Brief* - more than 5 years back, in the letter from February 3, 2003.
- 5.2. Is it possible to form a thin-walled elastic tube into a compact hollow cylinder in any other way – without "an inner forming rod that is larger in diameter than the endoscopic tube"?

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The Examiner asserts: in the application 09/509,377 the gap "does not have to be any size or any shape, and there does not have to be any continuity".

Disclosure of distortion No 6: in the application 09/509,377 the gap „does not have to be any size or any shape,... any continuity".

- 6.1. Here, as well as in items 3 and 4, the Examiner distorts the term *gap*.
- 6.2. The context of the *gap* is in detail and clearly given in application 09/509,377 (page 1, last paragraph).
- 6.3. "The gap is a positive difference between diameters of an opening and a shaft, which creates a freedom of their relative motion".
- 6.4. About the size of the *gap* is told in item 4.
- 6.5. Could it really arise a question about a form of a gap between a hollow cylinder and cylindrical endoscopic tube?
- 6.6. Could it really arise a question about a continuity of a gap between a hollow cylinder and cylindrical endoscopic tube? (see fig. 1c, 1b).

The Examiner asserts: "Inventors Certificate SU 1522466 and a translation thereof was filed on January 22, 2003".

Disclosure of distortion No 7: "SU 1522466 and a translation thereof was filed on January 22, 2003".

- 7.1. On April 15, 1999 the public got available the publication WO 99/17828 of the application PCT/EP98/06338. Therein is contained the Drawing of the Intestinal endoscope by SU 1522466, as well as the detail description of its construction.
- 7.2. On April 15, 1999 the public got available the publication WO 99/17655 of the application PCT/LV98/00006. Therein is contained the detail description of construction of the Intestinal endoscope by SU 1522466.
- 7.3. On April 20, 1999 the public got available the publication of the priority application P-97-190 (LV), which pamphlet comprised the SU 1522466 as an enclosure.
- 7.4. From January till June 2000 the Examiner Mr. Leubecker carried on the International Search of the application PCT/IL00/00017, which claims (1 and 4) repeat the SU 1522466 and the application PCT/LV98/00006, PCT/EP98/06338. During carrying out of the search, the Examiner cannot choose but to discover the SU 1522466.
- 7.5. On August 20, 2000 in the USPTO was filed this application 09/509,377, wherein were both the inventors certificate SU 1522466 and its detail description.

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The Examiner asserts: in SU 1522466 "*none of citations ... explicitly state or even imply that there is no gap between the eversible tube and the endoscopic tube*".

Disclosure of distortion No 8: "*none of citations ... explicitly state ... that there is no gap*".

- 8.1. Here, as well as in items 3, 4, 6 the Examiner distorts the term *gap*.
- 8.2. The context of the *gap* is in detail and clearly given in application 09/509,377 (page 1, last paragraph).
- 8.3. "The gap is a positive difference between diameters of an opening and a shaft, which creates a freedom of their relative motion".
- 8.4. De jure the absence in SU 1522466 of citations containing a term *gap*, is an evidence in favour of the absence of a gap.
- 8.5. Here are citations from SU 1522466, which do not contain the word *gap*, but which prove that there is no any gap there.

- The uneverted part of invaginator (4):
 - is "gathered on the light pipe 3" (see column 4, lines 19-20),
 - is "adjacent to the light pipe" (see Claims and column 3, line 2),
 - "cuddles to the light pipe" (see Figure and column 4, lines 47-53).
- "When the difficulties appear with the insertion of the light pipe 3 ... there is necessary to reduce on few seconds the pressure to zero ... In the moment of absence of pressure the pleated part of tube does not **cuddle** to the light pipe and under the action of spring 10 is able to displace to the projection 8 on the place of tube, which has turned into everted part" (SU 1522466, column 4, lines 40-53).
- "The invaginator is to be everted under a tip 6, but during invagination the distal part of the tube 3 becomes bared. It can be due both to lack of a gap between tube 3 and uneverted part of the invaginator and to a friable structure of the latter, which under the action of air pressure **adheres** to tube 3" (application 09/509,377, original specification, page 1 lines 36-40).

- 8.6. De facto in SU 1522466 the thin-walled elastic tube (4) grasps the light-pipe (3) at gathering, that means the contact diameters of this pair are inherently equal (see drawing). Consequently: there is no gap in SU 1522466.

The Examiner asserts: in SU 1522466 "*the entire inside surface of the eversible tube will NOT lie flat against the outside surface of the endoscopic tube ... Some of the folds ... folded away from the rod, ... and some will be inbetween. Between such folds, ..., there will be gaps*".

Disclosure of distortion No 9: In SU 1522466 "*Between such folds, ..., there will be gaps*".

- 9.1. Here, as well as in items 3, 4, 6, 8 the Examiner distorts the term *gap*.

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- 9.2. The context of the ~~gap~~ is in detail and clearly given in application 09/509,377 (page 1, last paragraph).
- 9.3. "The gap is a positive difference between diameters of an opening and a shaft, which creates a freedom of their relative motion".
- 9.4. De facto in SU 1522466 the thin-walled elastic tube (4) grasps the light-pipe (3) at gathering, that means the contact diameters of this pair are inherently equal. Consequently: there is no any gap.

The Examiner asserts: In SU 1522466 "at least part of the time, the lack of pressure and ability of the endoscopic tube (light pipe) to move with respect to the pleated part of the tube would suggest at least a small gap between the endoscopic tube and pleated tube".

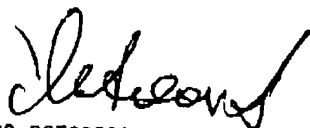
Disclosure of distortion No 10: in SU 1522466 "at least part of the time ... [is] at least a small gap".

- 10.1. Here, as well as in items 3, 5, 6, 8, 9 the Examiner distorts the term ~~gap~~.
- 10.2. The context of the ~~gap~~ is in detail and clearly given in application 09/509,377 (page 1, last paragraph).
- 10.3. "The gap is a positive difference between diameters of an opening and a shaft, which creates a freedom of their relative motion".
- 10.4. De facto in SU 1522466 the thin-walled elastic tube (4) grasps the light-pipe (3) at gathering, that means the contact diameters of this pair are inherently equal. Consequently: there is no any gap.
- 10.5. There is never any ~~gap~~ in a pair invaginator-endoscope in SU 1522466. At communication of the cavity (14) with atmosphere, the spring (10), due to friable an elastic structure of invaginator, is able to displace it, at working pressure, in accordance with the Pascal law – it is not able.

The Examiner asserts: "Regarding Appellant's remarks concerning the "essential reason of rejection of claim 1" ... such remarks are not true and have nothing to do with the present rejection".

Disclosure of 10 distortions clearly show the Examiner's striving by all means not to allow granting of patent, thus having justify granting of U.S.Pat. 6,485,409 and SightLine's rights on my invention. Taking into account this and other information, the remark from April 9, 2008 that: "The essential reason of rejection of my invention lies in fact, that it affects the illegal rights of SightLine and the actions of the Examiner Mr. Leubecker" stays in force.

Faithfully Yours,
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